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STATE OF INDIANA
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF AIR MANAGEMENT

October 28, 2000

Ms. Janet McCabe
Office of Air Management
Indiana Department of Environmental Management
100 N. Senate Ave.
P.O. Box 6015
Indianapolis, IN 46206-6015

Subject: State Implementation Plan for Control of NO_x

Dear Ms. McCabe:

Representative of competitive wholesale electric power generators and developers of efficient, low-emission generation facilities, Tenaska Indiana Partners, L.P. (Tenaska) seeks your careful consideration of the potential impacts on **Indiana** of the State Implementation Plan (SIP) for nitrogen oxide (**NO_x**) emission control and appeal to you for equitable treatment in this important rulemaking.

Tenaska has invested and will invest substantially in **Indiana** to meet the State's increasing demands for electricity and we are committed to supply reliable, competitively priced electricity to our **customers** from environmentally responsible facilities.

Because of ongoing deregulation of our industry, we bring competitive market pressure to bear on existing utilities to lower prices. Potential inequities in the distribution of allowances under the SIP could dangerously interfere with this process, with unintended economic consequences for Indiana.

Any rule that would fail to provide a **sufficient** allowance set-aside for new sources for any period of time, whether one year or ten years, would be anti-competitive. Not only would such a rule be inequitable, but it would create an economic barrier to market entry by new, clean power generating facilities that can help achieve environmental goals and generate electricity at lower cost for Indiana consumers.

Summary of Our Position and Recommendations

We request equal treatment of all electric generating industry participants in

Indiana. To enhance market efficiency and fairness, we recommend that Indiana adhere to the extent possible to the federal model rule, recognizing that expansion of the electric generating industry in Indiana will require larger new source set-asides. Our specific recommendations concerning allowance allocation and timing are attached in the form of a red-line of 326 IAC10-4-9, but can be summarized as follows:

- There should be a new source set-aside sufficient for anticipated new generation in Indiana. We recommend 10 percent for each of the first three years of the program and 4 percent annually thereafter, subject to periodic agency review and adjustment to take into account actual development of new sources.
- Allocation to new sources should be first come, first served to new sources that have achieved commercial operation at the beginning of each compliance period.
- The basis of allocation to new electric generating unit (**EGU**) sources should be based on **maximum** design heat input. Either an up-front capacity factor estimate or a surrender mechanism for unused allowances could be used to adjust allocations to new units for actual operation. The allowance allocation rate, based on 0.15 lbs. **NO_x** per MMBTU of heat input, should be exactly the same for new and baseline units.
- Action on output-based standards should be deferred until monitoring details are worked out at the Federal level. As in the federal Model Rule, the initial allocation period should be for no more than three years, and future allocations to existing units should be completed annually, four years in advance.

Background

The U.S. Environmental Protection Agency (EPA) has promulgated an extensive rule requiring many Eastern states and the District of Columbia to revise their state implementation plans (SIPs) for nitrogen oxides (**NO_x**) emissions. The SIP-Call Rule features a model program to aid affected states in revising their **SIPs** on the relatively short schedule imposed by the rule.

The implementation of the SIP-Call Rule raises many difficult issues for state regulators. In addition to complex allowance allocation, timing and other challenging administrative decisions, states must consider the **future** shape of the industries affected. The policies adopted now will bear directly upon the evolution of the affected industries in the SIP-Call states.

Of the affected industries, the electric generating industry will undergo the greatest change during the implementation period-and thus presents unique challenges and opportunities

for regulators. Due to rapid economic and electric industry growth, this is especially true in Indiana.

The Competitive Market Context for Indiana's SIP

Today's electric power industry is undergoing extensive, fundamental change. The way we use existing power plants, the number and type of plants to be built or rebuilt and the range of services provided to customers (for power supply and other services) will be dramatically different tomorrow from today.

In Indiana, as elsewhere across the United States, the electric industry includes **low-**emission, advanced technology generation facilities whose owners successfully compete in an increasingly open marketplace. Aware of Indiana's rapidly increasing demand for electricity and sensing new market opportunities, Tenaska and others are planning the construction of additional new, clean and efficient generation capacity to serve Indiana's homes, businesses, and industry.

The development of new generation capacity in Indiana presents a unique opportunity to significantly reduce **NO_x** emissions per unit of electricity, helping to achieve the State **NO_x** budget while reducing the cost of electricity through competition. Innovation and competition, however, depend on the access of new entrants to the marketplace.

Indiana's SIP must explicitly recognize the State's need for new generation capacity and the value of new entrants and innovation. The SIP should provide a level-playing-field market framework with equitable emission allowance allocations from the beginning.

EPA's Model Trading Rule

We strongly endorse EPA's development of a complete model framework for **market-**based **NO_x** emission reductions, but we also strongly endorse the adaptation of that rule to Indiana's needs. Encouraging minimal disparity among state programs promotes uniformity, which will be critical to achieving efficient, least-cost air quality improvements through a cap-and-trade market. Uniformity also promotes predictability in **electricity-**market planning, which is critical for both existing and prospective market participants and is an essential prerequisite to a robust, effective and efficient market for emission reductions.

On the other hand, we appreciate the need for Indiana's authority over implementation decisions, particularly considering the rapid economic growth, and related electric load growth, in this prosperous State. While the **IDEM** may find it necessary to tailor Indiana's implementation plans to the State's own needs, we encourage the use of the model rule to the extent possible, to promote uniformity and predictability for affected sources. Accordingly, we have attached pertinent sections of 326 IAC 10-4-9 with revisions that reflect our recommendations.

Planning and Initial Allocation

Because of Indiana's rapid growth and our expectation that significant new electric generation capacity will be constructed during the first years of this program, we believe Indiana will be best served by having a relatively short planning and initial allocation period, not longer than three years. This will help minimize potential disparities between the treatment of new sources and existing sources and hasten the day when there will be true equality in the treatment of all market participants. Equality of treatment is essential for an effective, least-cost trading program.

Initial allocations to existing units should represent a minimum allocation to be received by such units, reserving an adequate set-aside for projected new sources. To the benefit of existing sources, it would be possible to adjust the set-aside downward in the future, if fewer new sources are constructed. However, it would not be possible to adjust the **set-aside** upward, once a specific allocation commitment is made to the existing sources this year.

Set-Aside for New Units

EPA's model trading rule attempts to minimize barriers to new market entrants by providing a two percent set-aside of allowances for new units, which do not receive allowances under the proposed general allocation scheme. While the set-aside is **well-**intentioned, it is not reflective of Indiana's growth and is insufficient to ensure that new market entrants will not face competitive disadvantages, possibly over multiple years, during the critical initial period of operation.

To preclude any disincentive to the construction of new, cleaner sources, Indiana should adopt an adequate set-aside of allowances and provide for a **planning** period not greater than three years, to allow for appropriate adjustments of the set-aside in the future.

Recognizing that electric load growth will be served primarily by new facilities, we propose a set-aside of 10 percent for each of the initial three years of the program, with an annual set-aside of 4 percent annually thereafter. This seems a fair division of growth-related allowances in the State budget, since EPA allowed 17 percent for growth when developing that budget.

EPA's model program also contains a surrender mechanism for new source set-asides under **which** unused allowances would be deducted (or lost) in the case that a unit's actual utilization fell below its maximum design heat input. This surrender mechanism distorts the market by imposing an artificial limit on the incentive to maximize NO_x reductions and generate surplus allowances, particularly in cases when new sources are allocated allowances based on NO_x rates below 0.15 lbs./mmBtu. Moreover, as allowances represent significant value, any loss of allowances from the uniform 0.15 LB/mmBtu level represents a potentially significant competitive disadvantage to an affected source. **We propose that set-aside allocations be first come, first served and based on design heat**

input, with either: 1) a capacity factored design heat input basis and no surrender mechanism or 2) an unfactored design heat input basis with a surrender mechanism based on actual heat input during the compliance period.

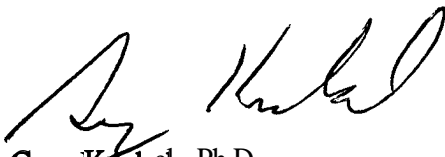
Ultimately, any approach is appropriate that assures new entrants neither advantages nor disadvantages in market participation; that is, access to emissions allowances with the same rights, terms and conditions as existing market participants. Such a **level-playing-field** environment for competition, in both the electricity market and under the **NO_x SIP** Call, is critical to the economic and environmental well being of Indiana.

Again, we appreciate your efforts to understand and consider our industry's concerns in this important rulemaking. We look forward to working with you to resolve technical issues or to respond to any questions you may have.

Very truly yours,

TENASKA INDIANA PARTNERS, L.P.

By: Tenaska Indiana, Inc.,
Its Managing General Partner

By: 
Greg Kunkel, Ph.D.
Manager of Environmental Affairs

Enclosures

cc: David Hatchett
Jana Martin

326 **IAC 1 O-4-9** NO, allowance allocations

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 9. (a) The trading program budget allocated by the department under subsection (c) for an ozone control period shall equal the total number of tons of NO, emissions apportioned to the NO, budget units under section 1 of this rule for the ozone control period, as determined by the procedures in this section. The total number of tons of NO, emissions that are available for allocation as NO, allowances under this section are as follows:

1. [Increased to reflect extra allocations mistakenly included in Large Affected Boiler budget] tons for electricity generating units.
2. [Decreased to reflect allocations to be moved to EGU budget] tons for large affected boilers.

(b) The department shall allocate NO, allowances to NO, budget units according to the following schedule:

- (1) A one (1) year allocation that is three (3) years in advance of the ozone control period in which the allowances may be used, with an initial three (3) year allocation, shall be as follows:
 - (A) By September **30, 2001**, the department shall submit to the U.S. EPA the NO, allowance allocations, in accordance with subsection (c), for the ozone periods in **2004, 2005**, and 2006.
 - (B) By April **1, 2004** and April 1 of each year thereafter, the department shall submit to the U.S. EPA the NO, allowance allocations, in accordance with subsection (c), for the ozone control period in the year that is three (3) years after the year of the applicable deadline for submission under this subdivision.
- (2) If ~~the~~ department fails to submit to the U.S. EPA the NO, allowance allocations in accordance with this subdivision, the U.S. EPA will allocate, for the applicable ozone control period, the same number of NO, allowances as were allocated for the preceding ozone control period.
- (3) By April **1, 2004** and April 1 of each year thereafter, the department shall submit to the U.S. EPA the NO, allowance allocations remaining in the allocation set-aside for the prior ozone control period, in accordance with subsection (c) [why should allocations not be redistributed?].

(c) [Consistent with the Section 126 Rule and to encourage efficiency, an output-based approach should be used.] The heat input, in million British thermal units (**mmBtu**), used for calculating NO, allowance allocations for each NO, budget unit under section 1 of this rule shall be:

- (1) For a NO, allowance allocation under subsections (b)(l)(A):
 - (A) the average of the two (2) highest amounts of the **unit** if an electricity generating unit; or
 - (B) the ozone control period in 1995, if the unit is a large affected boiler.
- (2) For a NO, allowance allocation under subsection (b)(l)(B), the unit's heat input for the ozone control period in the year that is four (4) years before the year for which the NO, allocation is being calculated.

The unit's total heat input for the ozone control period in each year shall be determined in accordance with 40 CFR **75*** if the NO, budget unit was otherwise subject to the requirements of 40 CFR **75*** for the year, or shall be based on the best available data reported to the department for the unit if the unit was not otherwise subject to the requirements of 40 CFR **75*** for the year.

(d) For each ozone control period under subsection (b), the department shall allocate to all NO, budget units that commenced operation before May 1 of the period used to calculate heat input under subsection (c)(l), a total number of NO, allowances equal to ninety percent (90%) in **2004, 2005**, and 2006, or ninety-six percent (96%) thereafter, of the tons of NO, emissions in the trading program budget apportioned in accordance with the following procedures:

- (1) The department shall allocate NO, allowances to each electricity generating unit in an amount equaling fifteen one-hundredths (0.15) pound per million British thermal units multiplied by the heat input determined under subsection (c) and dividing by two thousand (2,000) pounds per ton, rounded to the nearest whole NO, allowance, as appropriate.

(2) If the initial total number of NO_x allowances allocated to all electricity generating unit for an ozone control period under subdivision (1) does not equal ninety percent (90%) in **2004, 2005**, and 2006, and ninety-six percent (96%) thereafter, of the number of tons of NO_x emissions in the trading program budget apportioned to electric generating units under subsection (a)(1), the department shall adjust the total number of NO_x allowances allocated to all NO_x budget units for the ozone control period under subdivision (1) so that the total number of NO_x allowances allocated equals ninety percent (90%) in **2004, 2005**, and 2006, and ninety-six percent (96%) thereafter, of the number of tons of NO_x emissions in the trading program budget apportioned to electric generating units under subsection (a)(1). This adjustment shall be made by:

(A) multiplying each unit's allocation by ninety percent (90%) in **2004, 2005**, and 2006, and ninety-six percent (96%) thereafter, of the number of tons of NO_x emissions in the trading program budget apportioned to electric generating units; and

(B) dividing by the total number of NO_x allowances allocated under subdivision **(1)**, and rounding to the nearest whole NO_x allowance, as appropriate.

(3) The department shall allocate NO_x allowances to each large affected boiler in an amount equaling seventeen one-hundredths (0.17) pound per million British thermal units multiplied by the heat input determined under subsection (c) and dividing by two thousand (2,000) pounds per ton, rounded to the nearest whole NO_x allowance, as appropriate.

(4) If the initial number of NO_x allowances allocated to all large affected boilers for an ozone control period under subdivision (3) does not equal ninety-five percent (95%) in **2004, 2005**, and 2006, and ninety-eight percent (98%) thereafter, of the number of tons of NO_x emissions in the trading program budget apportioned to large affected boilers, the department shall adjust the total number of NO_x allowances allocated to all NO_x budget units for the ozone control period under subdivision (3) so that the total number of **NO_x** allowances allocated equals ninety-five percent (95%) in **2004, 2005**, and 2006, and ninety eight percent (98%) thereafter, of the number of tons of NO_x emissions in the trading program budget apportioned to large affected boilers. This adjustment shall be made by:

(A) multiplying each unit's allocation by ninety-five percent (95%) in **2004, 2005**, and 2006, and ninety-eight percent (98%) thereafter, of the number of tons of NO_x emissions in the trading program budget apportioned to large affected boilers; and

(B) dividing by the total number of NO_x allowances allocated under subdivision **(3)**, and rounding to the nearest whole NO_x allowance as appropriate.

(5) For NO_x budget units that commenced operation, or are projected to commence operation, on or after May 1 of the period used to calculate heat input under subsection (c), the department shall allocate NO_x allowances in accordance with the following procedures:

(A) The department shall establish one (1) allocation set-aside for each ozone control period. Each allocation set-aside shall be allocated NO_x allowances equal to ten percent (10%) in 2004, 2005, and 2006, and four percent (4%) thereafter, of the tons of NO_x emissions in the trading program budget under subsection (a), rounded to the nearest whole NO_x allowance, as appropriate.

(B) The NO_x authorized account representative of a NO_x budget unit under this subdivision may submit to the department a request, in writing or in a format specified by the department, to be allocated NO_x allowances for no more than **five** (5) consecutive ozone control periods under subsection (b), starting with the ozone control period during which the NO_x budget unit commenced, or is projected to commence, operation and ending with the ozone control period preceding the ozone control period for which it shall receive an allocation under subdivision (1) or (3). The NO_x allowance allocation request must be submitted prior to May 1 of the first ozone control period for which the NO_x allowance allocation is requested and after the date on which the department issues a permit to construct the NO_x budget unit.

(C) In a NO_x allowance allocation request under this subdivision, the NO_x authorized account representative may request for an ozone control period, NO_x allowances in an amount that does not exceed the following:

(i) For an electricity generating unit:

(AA) **fifteen** one-hundredths (0.15) pound per million British thermal units;

(BB) multiplied by the NO, budget unit's maximum design heat input; in million British thermal units per hour and dividing by two thousand (2,000) pounds per ton; and

(CC) multiplied by the number of hours remaining in the ozone control period starting with the **first** day in the ozone control period on which the unit operated or is projected to operate.

(ii) For a large affected boiler:

(AA) seventeen one-hundredths (0.17) pound per million British thermal units;

(BB) multiplied by the NO, budget unit's maximum design heat input; in million British thermal units per hour and dividing by two thousand (2,000) pounds per ton; and

(CC) multiplied by the number of hours remaining in the ozone control period starting with the first day in the ozone control period on which the unit operated or is projected to operate.

(D) The department shall review, and allocate NO, allowances pursuant to, each NO, allowance allocation request in the order that the request is received or the construction permit is issued by the department as follows:

(i) Upon receipt of the NO, allowance allocation request, the department shall determine whether, and shall make any necessary adjustments to the request to ensure that, for electricity generating units, the ozone control period and the number of allowances specified are consistent with the requirements of clause (C)(1) and, for large affected boilers, the ozone control period and the number of allowances specified are consistent with the requirements of clause (C)(2).

(ii) If the allocation set-aside for the ozone control period for which NO, allowances are requested has an amount of NO, allowances greater than or equal to the number requested, as adjusted under item (i), the department shall allocate the amount of the NO, allowances requested, as adjusted under item (i), to the NO, budget unit.

(iii) If the allocation set-aside for the ozone control period for which NO, allowances are requested has an amount of NO, allowances less than the number requested, as adjusted under item (i), the department shall deny in part the request and allocate only the remaining number of NO, allowances in the allocation set-aside to the NO, budget unit.

.. (iv) Once an allocation set-aside for an ozone control period has been depleted of all NO, allowances, the department shall deny, and shall not allocate any NO, allowances pursuant to, any NO, allowance allocation request under which NO, allowances have not already been allocated for the ozone control period.

Within sixty (60) days of receipt of a NO, allowance allocation request, the department shall take appropriate action under clause (D) and notify the NO, authorized account representative that submitted the request and the U.S. EPA of the number of NO, allowances, if any, allocated for the ozone control period to the NO, budget unit.

(e) For a NO, budget unit that is allocated NO, allowances under subsection (d)(5) for an ozone control period, the U.S. EPA will deduct NO, allowances under section **10(k)(1)** or section **10(k)(8)** of **this rule** to account for the actual utilization of the unit during the ozone control period. The U.S. EPA will calculate the number of NO, allowances to be deducted to account for the unit's actual utilization using the following formulas and rounding to the nearest whole NO, allowance, as appropriate, provided that the number of NO, allowances to be deducted shall be zero (0) if the number calculated is less than zero (0):

(1) NO, allowances deducted for actual utilization for electricity generating units = (Unit's NO, allowances allocated for ozone control period) - (Unit's actual ozone control period utilization x fifteen one-hundredths (0.15) pound per million British thermal units or the allowable emission rate, whichever is lower and dividing by two thousand (2,000) pounds per ton).

(2) NO, allowances deducted for actual utilization for large affected boilers = (Unit's NO, allowances allocated for ozone control period) - (Unit's actual ozone control period utilization x

seventeen one-hundredths (0.17) pound per million British thermal units or the allowable emission rate, whichever is lower and dividing by two thousand (2,000) pounds per ton).

where:

“Unit’s NO, allowances allocated for ozone control period” * the number of NO, allowances allocated to the unit for the ozone control period under subdivision (5); and “Unit’s actual ozone control period utilization” is the utilization, in million British thermal units, as defined in section 2 of this rule, of the unit during the ozone control period.

(f) After making the deductions for compliance under section **10(k)(1)** or **10(k)(8)** of this rule for an ozone control period, the U.S. EPA Will notify the department whether any NO, allowances remain in the allocation set-aside for the ozone control period. The department shall allocate any remaining NO, allowances to the NO, budget units using the following formula and rounding to the nearest whole NO, allowance as appropriate. A unit’s share of NO, allowances remaining in allocation set-aside = Total NO, allowances remaining in allocation set-aside x (Unit’s NO, allowance allocation ÷ trading program budget excluding allocation set-aside) where:

(1) Total NO, allowances remaining in allocation set-aside is the total number of NO, allowances remaining in the allocation set-aside for the ozone control period to which the allocation set-aside applies.

(2) Unit’s NO, allowance allocation is the number of NO, allowances allocated under subsection (d)(1) or (d)(3) to the unit for the ozone control period to which the allocation set-aside applies.

(3) The trading program budget excluding allocation set-aside is the trading program budget under subsection (a) for the ozone control period to which the allocation set-aside applies multiplied by ninety percent (**90%**) if the ozone control period is in **2004, 2005**, or 2006 and ninety-six percent (96%) if the ozone control period is in any year thereafter, rounded to the nearest whole NO, allowance as appropriate.

*Copies of the Code of Federal Regulations (CFR) and referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at **the** Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IA C I O-4-9*)

Sec. 9. (a) The trading program budget allocated by the department under subsection (c) for an ozone control period shall equal the total number of tons of NO, emissions apportioned to the NO, budget units under section 1 of this rule for the ozone control period, as determined by the procedures in this section. The total number of tons of NO, emissions that are available for allocation as NO, allowances under this section **are** as follows:

1. ~~Forty-five thousand nine hundred fifty-two (45,952)~~ **Increased to reflect extra allocations mistakenly included in Large Affected Boiler budget]** tons for electricity generating units.

2. [Decreased to reflect allocations to be moved to EGU budget] tons for large affected boilers.

(b) The department shall allocate NO, allowances to NO, budget units according to the following schedule:

(1) A one (1) year allocation that is three (3) years in advance of the ozone control period ~~that in which the~~ allowances may be used, with an initial three (3) year allocation, shall be as follows:

(A) By September **30, 2001**, the department shall submit to the U.S. EPA the NO, allowance allocations, in accordance with subsection (c), for the ozone periods in **2004, 2005, and 2006**.

(B) By April **1, 2004** and April 1 of each year thereafter, the department shall submit to the U.S. EPA the NO, allowance allocations, in accordance with subsection (c), for the ozone control period in the year that is three (3) years after the year of the applicable deadline for submission under this subdivision.

(2) If the department fails to submit to the U.S. EPA the NO, allowance allocations in accordance with this subdivision, the U.S. EPA will allocate, for the applicable ozone control period, the same number of NO, allowances as were allocated for the preceding ozone control period.

(3) By April **1, 2004** and April 1 of each year thereafter, the department shall submit to the U.S. EPA the NO, allowance allocations remaining in the allocation set-aside for the prior ozone control period, in accordance with subsection (c)

(c) [Consistent with the Section 126 Rule and to encourage efficiency, an output-based approach should be used.] The heat input, in million British thermal units (**mmBtu**), used for calculating NO, allowance allocations for each NO, budget unit under section 1 of this rule shall be:

(1) For a NO, allowance allocation under subsections (b)(1)(A):

(A) the average of the two (2) highest amounts of the unit ~~is if~~ an electricity generating unit; or

(B) the ozone control period in 1995, if the unit is a large affected boiler.

(2) For a NO, allowance allocation under subsection (b)(1)(B), the unit's heat input for the ozone control period in the year that is four (4) years before the year for which the NO, allocation is being calculated.

The unit's total heat input for the ozone control period in each year shall be determined in accordance with 40 CFR **75*** if the ~~NO_x budget~~ unit was otherwise subject to the requirements of 40 CFR **75*** for the year, or shall be based on the best available data reported to the department for the unit if the unit was not otherwise subject to the requirements of 40 CFR **75*** for the year.

(d) For each ozone control period under subsection (b), the department shall allocate to all NO, budget units that commenced operation before May 1 of the period used to calculate heat input under subsection (c)(1), a total number of NO, allowances equal to ninety ~~five~~ percent (~~95%~~) **(90%)** in 2004, 2005, and 2006, or ninety-eight ~~six~~ percent (~~98%~~) **(96%)** thereafter, of

the tons of NO_x emissions in the trading program budget apportioned in accordance with the following procedures:

- (1) The department shall allocate NO_x allowances to each electricity generating unit in an amount equaling fifteen one-hundredths (0.15) pound per million British thermal units multiplied by the heat input determined under subsection (c) and dividing by two thousand (2,000) pounds per ton, rounded to the nearest whole NO_x allowance, as appropriate.
- (2) If the initial total number of NO_x allowances allocated to all electricity generating unit for an ozone control period under subdivision (1) does not equal ninety ~~five~~ percent ~~(95%)(90%)~~ in 2004, 2005, and 2006, and ninety-eight six percent ~~(98%)(96%)~~ thereafter, of the number of tons of NO_x emissions in the trading program budget apportioned to electric generating units under subsection (a)(1), the department shall adjust the total number of NO_x allowances allocated to all NO_x budget units for the ozone control period under subdivision (1) so that the total number of NO_x allowances allocated equals ninety ~~five~~ percent ~~(95%)(90%)~~ in 2004, 2005, and 2006, and ~~ninety-eight~~ six percent ~~(98%)(96%)~~ thereafter, of the number of tons of NO_x emissions in the trading program budget apportioned to electric generating units under subsection (a)(1). This adjustment shall be made by:

- (A) multiplying each unit's allocation by ninety ~~five~~ percent ~~(95%)(90%)~~ in 2004, 2005, and 2006, and ninety-eight six percent ~~(98%)(96%)~~ thereafter, of the number of tons of NO_x emissions in the trading program budget apportioned to electric generating units; and

- (B) dividing by the total number of NO_x allowances allocated under subdivision (1), and rounding to the nearest whole NO_x allowance, as appropriate.

- (3) The department shall allocate NO_x allowances to each large affected boiler in an amount equaling seventeen one-hundredths (0.17) pound per million British thermal units multiplied by the heat input determined under subsection (c) and dividing by two thousand (2,000) pounds per ton, rounded to the nearest whole NO_x allowance, as appropriate.

- (4) If the initial number of NO_x allowances allocated to all large affected boilers for an ozone control period under subdivision (3) does not equal ninety-five percent (95%) in 2004, 2005, and 2006, and ninety-eight percent (98%) thereafter, of the number of tons of NO_x emissions in the trading program budget apportioned to large affected boilers, the department shall adjust the total number of NO_x allowances allocated to all NO_x budget units for the ozone control period under subdivision (3) so that the total number of NO_x allowances allocated equals ninety-five percent (95%) in 2004, 2005, and 2006, and ninety eight percent (98%) thereafter, of the number of tons of NO_x emissions in the trading program budget apportioned to large affected boilers. This adjustment shall be made by:

- (A) multiplying each unit's allocation by ninety-five percent (95%) in 2004, 2005, and 2006, and ninety-eight percent (98%) thereafter, of the number of tons of NO_x emissions in the trading program budget apportioned to large affected boilers; and

- (B) dividing by the total number of NO_x allowances allocated under subdivision (3), and rounding to the nearest whole NO_x allowance as appropriate.

- (5) For NO_x budget units that commenced operation, or are projected to commence operation, on or after May 1 of the period used to calculate heat input under subsection (c), the department shall allocate NO_x allowances in accordance with the following procedures:

- (A) The department shall establish one (1) allocation set-aside for each ozone control period. Each allocation set-aside shall be allocated NO_x allowances equal to ~~five~~ ten percent ~~(5%)(10%)~~ in 2004, 2005, and 2006, and ~~two~~ four percent ~~(2%)(4%)~~ thereafter, of the tons of NO_x emissions in the trading program budget under subsection (a), rounded to the nearest whole NO_x allowance, as appropriate.

- (B) The NO_x authorized account representative of a NO_x budget unit under this subdivision may submit to the department a request, in writing or in a format specified by the department, to be allocated NO_x allowances for no more than five (5) consecutive ozone control periods under subsection (b), starting with the ozone control period during which the NO_x budget unit commenced, or is projected to commence, operation and ending with the ozone control period preceding the ozone control period for which it shall receive an allocation under

subdivision (1) or (3). The NO_x allowance allocation request must be submitted prior to May 1 of the first ozone control period for which the NO_x allowance allocation is requested and after the date on which the department issues a permit to construct the NO_x budget unit.

(C) In a NO_x allowance allocation request under this subdivision, the NO_x authorized account representative may request for an ozone control period, NO_x allowances in an amount that does not exceed the following:

(i) For an electricity generating unit:

(AA) ~~fifteen~~ one-hundredths (0.15) pound per million British thermal units ~~or the allowable emission rate, whichever is more stringent;~~

(BB) multiplied by the NO_x budget unit's maximum design heat input; in million British thermal units per hour and dividing by two thousand (2,000) pounds per ton; and

(CC) multiplied by the number of hours remaining in the ozone control period starting with the first day in the ozone control period on which the unit operated or is projected to operate.

(ii) For a large affected boiler:

(AA) seventeen one-hundredths (0.17) pound per million British thermal units ~~or the allowable emission rate, whichever is more stringent;~~

(BB) multiplied by the NO_x budget unit's maximum design heat input; in million British thermal units per hour and dividing by two thousand (2,000) pounds per ton; and

(CC) multiplied by the number of hours remaining in the ozone control period starting with the first day in the ozone control period on which the unit operated or is projected to operate.

(D) The department shall review, and allocate NO_x allowances pursuant to, each NO_x allowance allocation request in the order that the request is received or the construction permit is issued by the department as follows:

(i) Upon receipt of the NO_x allowance allocation request, the department shall determine whether, and shall make any necessary adjustments to the request to ensure that, for electricity generating **units**, the ozone control period and the number of allowances specified are consistent with the requirements of clause (C)(1) and, for large affected boilers, the ozone control period and the number of allowances specified are consistent with the requirements of clause (C)(2).

(ii) If the allocation set-aside for the ozone control period for which NO_x allowances are requested has an amount of NO_x allowances greater than or equal to the number requested, as adjusted under item (i), the department shall allocate the amount of the NO_x allowances requested, as adjusted under item (i), to the NO_x budget **unit**.

(iii) If the allocation set-aside for the ozone control period for which NO_x allowances are requested has an amount of NO_x allowances less than the number requested, as adjusted under item (i), the department shall deny in part the request and allocate only the remaining number of NO_x allowances in the allocation set-aside to the NO_x budget unit.

(iv) Once an allocation set-aside for an ozone control period has been depleted of all NO_x allowances, the department shall deny, and shall not allocate any NO_x allowances pursuant to, any NO_x allowance allocation request under which NO_x allowances have not already been allocated for the ozone control period.

Within sixty (60) days of receipt of a NO_x allowance allocation request, the department shall take appropriate action under clause (D) and notify the NO_x authorized account representative that submitted the request and the U.S. EPA of the number of NO_x allowances, if any, allocated for the ozone control period to the NO_x budget unit.

(e) For a NO_x budget unit that is allocated NO_x allowances under subsection (d)(5) for an ozone control period, the U.S. EPA will deduct NO_x allowances under section **10(k)(1)** or section **10(k)(8)** of this rule to account for the actual utilization of the unit during the ozone control period. The U.S. EPA will calculate the number of NO_x allowances to be deducted to account for the unit's actual utilization

using the following formulas and rounding to the nearest whole NO, allowance, as appropriate, provided that the number of NO, allowances to be deducted shall be zero (0) if the number calculated is less than zero (0):

(1) NO, allowances deducted for actual utilization for electricity generating units = (Unit's NO, allowances allocated for ozone control period) - (Unit's actual ozone control period utilization x fifteen one-hundredths (0.15) pound per million British thermal units or the allowable emission rate, whichever is ~~more stringent~~ lower and dividing by two thousand (2,000) pounds per ton).

(2) NO, allowances deducted for actual utilization for large affected boilers = (Unit's NO, allowances allocated for ozone control period) - (Unit's actual ozone control period utilization x seventeen one-hundredths (0.17) pound per million British thermal units or the allowable emission rate, whichever is ~~more stringent~~ lower and dividing by two thousand (2,000) pounds per ton).

where:

"Unit's NO, allowances allocated for ozone control period" * the number of NO, allowances allocated to the unit for the ozone control period under subdivision (5); and "Unit's actual ozone control period utilization" is the utilization, in million British thermal units, as defined in section 2 of this rule, of the unit during the ozone control period.

(f) After making the deductions for compliance under section ~~10(k)(1)~~ or ~~10(k)(8)~~ of this rule for an ozone control period, the U.S. EPA Will notify the department whether any NO, allowances remain in the allocation set-aside for the ozone control period. The department shall allocate any remaining NO, allowances to the NO, budget units using the following formula and rounding to the nearest whole NO, allowance as appropriate. A unit's share of NO, allowances remaining in allocation set-aside = Total NO, allowances remaining in allocation set-aside x (Unit's NO, allowance allocation ÷ trading program budget excluding allocation set-aside) where:

(1) Total NO, allowances remaining in allocation set-aside is the total number of NO, allowances remaining in the allocation set-aside for the ozone control period to which the allocation set-aside applies.

(2) Unit's NO, allowance allocation is the number of NO, allowances allocated under subsection (d)(1) or (d)(3) to the unit for the ozone control period to which the allocation set-aside applies.

(3) The trading program budget excluding allocation set-aside is the trading program budget under subsection (a) for the ozone control period to which the allocation set-aside applies multiplied by ninety ~~five~~ percent (~~95%~~)(90%) if the ozone control period is in 2004, 2005, or 2006 and ninety-~~eight~~ six percent (~~98%~~)(96%) if the ozone control period is in any year thereafter, rounded to the nearest whole NO, allowance as appropriate.

*Copies of the Code of Federal Regulations (CFR) and referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (Air Pollution Control Board; 326 IAC 10-4-9)

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